

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DERRICK L. KING, }  
Plaintiff, } Civil Action No. 09-175 Erie  
v. }  
JEFFREY BEARD, et al., }  
Defendants. }

**MEMORANDUM ORDER**

This civil rights action was received by the Clerk of Court on August 12, 2009, was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation [Doc. No. 44], filed on July 26, 2010, recommended that the Defendants' motion to dismiss, or in the alternative for summary judgment [Doc. No. 31], as supplemented [Doc. No. 42], be granted in part and denied in part. Specifically, the Magistrate Judge recommended that the motion be granted as to Defendant Jeffrey A. Beard, and granted as to Claim 2 and Claim 3. It was recommended that the motion be denied as to Claim 1 and Claim 4. The parties were allowed fourteen (14) days in which to file objections, and no objections were filed. After de novo review of the motion and documents in the case, together with the Report and Recommendations, the following order is entered:

AND NOW, this 23<sup>rd</sup> day of August, 2010;

IT IS HEREBY ORDERED that the Defendants' motion to dismiss, or in the alternative for summary judgement [Doc. No. 31] and [Doc. No. 42] is GRANTED in part and DENIED in part; the motion is GRANTED as to Defendant Jeffrey A. Beard and Claim 2 and Claim 3; and DENIED as to Claim 1 and Claim 4. The Clerk of Courts is directed to terminate Defendant Jeffrey A. Beard from this action.

The Report and Recommendation [Doc. No. 44] of Magistrate Judge Baxter, filed on July 26, 2010, is adopted as the opinion of the Court.

s/ Sean J. McLaughlin  
United States District Judge

cm: All parties of record  
Susan Paradise Baxter, U.S. Magistrate Judge